Criminal Appeal No.135-DB of 1998.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Raju and others **...**Appellants

VERSUS

State of Haryana **...**Respondent

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.

HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr.Baldev Singh, Senior Advocate, with
Mr. Arshvinder Singh, Advocate,
for the appellants.

Mr. S.S. Goripuria, Additional Advocate General, Haryana.

Mr.Hemant Bassi, Advocate,
for the complainant.

-.-

MOHINDER PAL, J.

Appellants Raju, Anil alias Balli and Mangli have filed this appeal against the judgment of conviction dated March 02, 1998 and sentence order dated March 04, 1998, passed by the learned Sessions Judge, Hissar, in case First Information Report No.160 dated April 01, 1994, under Section 302 read with

Criminal Appeal No.135-DB of 1998.

Section 34 of the Indian Penal Code (hereinafter referred to as `the Code') registered at Police Station City Hissar.

2. Appellant Anil alias Balli was convicted under Section 302 of the Code for causing the murder of Ishwar while appellants Raju and Mangli were convicted under Section 302 read with Section 34 of the Code and each of them was sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for three years. Appellant Anil alias Balli was also convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for one year. The substantive sentences of imprisonment awarded to Anil alias Balli were ordered to run concurrently.

2. The prayer made in this appeal is to set aside the impugned judgment and the sentence order and to acquit the appellants of the charges framed against them by accepting this appeal.

3. This case was registered on the statement (Exhibit P.C) of complainant Chandu Lal. The facts of the prosecution case are that on March 31, 1994, at about 10.30 P.M, children were singing songs in `Mohalla' Parav, Hissar, as there was a `Bana' ceremony in connection with the marriage in the family of potters. At that time, Ishwar, brother of the complainant, was returning to his house after seeing a movie. As Ishwar reached near the gate of Government Live Stock Farm, Hissar, appellants Raju, Mangli and Anil alias Balli and

Sucha Singh, who was tried separately by the Court under the Juvenile Justice Act at Bhiwani under the orders dated May 22, 1997, passed by the learned Sessions Judge, Hissar, attacked him and gave fists and slap blows. In order to save himself, Ishwar started running towards his house. However, he was chased and surrounded by the above-mentioned accused near the house of Om Parkash. The complainant was present near the house of Om Parkash when the occurrence took place. At that time, Anil and Sucha Singh accused were armed with knives while the other two accused, namely, Raju and Mangli were empty handed. It has been further recorded in the First Information Report that Raju and Mangli accused caught hold of Ishwar while Anil accused gave a knife blow on the left side of his chest. Ishwar fell down on the ground and then accused Sucha Singh gave another knife blow on the right side of his waist. Complainant Chandu Lal raised alarm whereupon all the accused ran away from the place of occurrence with their respective weapons.

Thereafter, an effort to save Ishwar proved futile as he died on the way while being taken to the hospital.

Dr.Daya Nand, Medical Officer, General Hospital, Hissar (P.W.1), was on emergency duty in the hospital when the dead body of Ishwar was brought to the hospital at 11.18 P.M. The Doctor sent ruqa (Exhibit P.A) in this regard to the Incharge, Police Post, General Hospital, Hissar.

Ruqa (Exhibit P.A) was received by Assistant Sub

Inspector Jagdish Chander, Investigating Officer (P.W.10) at 11.50 P.M on March 31, 1994. He went to General Hospital, Hissar, where complainant Chandu Lal met him and made his statement (Exhibit P.C). Assistant Sub Inspector Jagdish Chander made his endorsement (Exhibit P.C/2) on the statement and sent the same to Police Station City, Hissar, where First Information Report (Exhibit P.C/1) was registered on its basis. Thereafter, Assistant Sub Inspector Jagdish Chander conducted inquest proceedings on the dead body of Ishwar which was lying in the mortuary and was identified by complainant Chandu Lal and Vijay son of Phool Singh resident of Mohalla Parav, Hissar. He prepared inquest report (Exhibit P.M). The Investigating Officer handed over the dead body to Constables Krishan Lal and Moti Lal along with application (Exhibit P.L) for getting post mortem conducted.

Dr. (Mrs.) K.K. Nawal, Senior Medical Officer, General Hospital, Hissar (P.W.8), along with Dr. Pawan Jain, conducted autopsy on the dead body of Ishwar on April 01, 1994 at 9.30 A.M and found the following injuries:-

> " 1. There was an incised wound 2.5 cms x 2.5 cms on anterior aspect of left side of chest 10 cms below the left nipple at a level of ziphiternum 7 cms lateral to mid-line and in line with left nipple. Blood was coming out of the wou.nd Corresponding cut was

present on shirt and banian.

2. There was incised wound 2 cms x .75 cm x bone deep on posterior aspect of right chest, 7.5 cms away from mid-line near medical border of scapula. Corresponding cut was present on shirt and banian and clothes were blood-stained.

3. An incised wound 1 x .5 cm x bone deep, 12.5 cms from mid-line on posterior aspect of left side of back along posterior axilliary line and at level of inferior angle of scapula. Corresponding cut on shirt and banian was present.

4. Multiple abrasions of different sizes were present on posterior aspect of right shoulder and scapular region with skin pleaded off.

5. An incised would 1.5 cms x .5 cms was present on anterio-lateral aspect of left thigh 10 cms above the left knee joint. Corresponding cut was present on pant. No other mark of external injury over the body.

On examination of thorax, chest wall:

Left sixth rib was cut about 3 cms. Thoracic cavity both right and left side

were full of blood. Approximately more than one litre of blood was there. Right pleura was cut posteriorly. Larynx and trachea were pale and healthy. Right long was cut posteriorly. Left lung was pale and healthy. Paricardium was cut in the region of left ventricle 2 cms in size on anterior aspect. Blood was coming out of the cut. There was a corresponding cut in left ventricle. Large vessels were pale and healthy. Other organs of the body were found healthy. "

In the opinion of the doctors, the cause of death was shock and haemorrhage as a result of multiple injuries which were ante mortem in nature and sufficient to cause death in natural course of time. The probable time that elapsed between injury and death was variable and between death and post mortem examination was within 24 hours.

The dead body was brought by Constable Krishan Lal and was identified by Chandu Lal (complainant) and Vijay son of Phool Singh and the belongings of the deceased after post mortem examination were handed over to Constable Krishan Lal.

Exhibit P.K is copy of post mortem report and Exhibits P.K/1-2 are the diagrams showing the seats of the injuries.

The Investigating Officer had gone to the place of

occurrence at about 5.30 A.M on April 01, 1994 along with complainant Chandu Lal. He got prepared rough site plan (Exhibit P.Q) with correct marginal notes showing the place of occurrence. He lifted blood-stained earth from the spot, which was sealed into a parcel and taken into possession vide seizure memo (Exhibit P.J) attested by complainant Chandu Lal and P.W. 6 Ramesh. He recorded statements of P.Ws Subash and Ramesh and Rohtash and Bhanwar Lal under Section 161 of the Code of Criminal Procedure. He also recorded supplementary statement of complainant Chandu Lal.

Accused Raju and Mangli were arrested on April 02, 1994. Accused Raju was having an injury on his right forearm which was bleeding. He was taken to General Hospital, Hissar, where he was medico-legally examined by Dr. B.L. Bagri (P.W.2) and the following injury was observed:-

> " 1. A lacerated wound 2-1/2 cm x ½ cm was present on the posterior aspect of right forearm. Bleeding was present, would was painful. Blood with serum was present. Slightly scabbing was present on the margins.

Nature of injury was simple. Probable duration of injury was within 72 hours. The kind of weapon used was blunt. Exhibit P.B is copy of the medico-legal report and Exhibit P.B/1 is the diagram showing the seat of injury.

Accused Anil alias Balli was arrested on April 03, 1994 and upon interrogation he got recovered knife (Exhibit P.5) as per his disclosure statement (Exhibits P.O) for which a separate case under Section 25 of the Arms Act was registered against him vide First Information Reports P.O/4.

4. After completion of investigation, report under Section 173 of the Code of Criminal Procedure was submitted in Court.

5. The case was committed to the Court of Session for trial. Accused Anil alias Balli was charged under Section 302 of the Code and Section 25 of the Arms Act whereas accused Raju and Mangli were charged under Section 302 read with Section 34 of the Code. They did not plead guilty to the charge and claimed trial.

6. The prosecution, in order to prove its case against the accused, examined P.W.1 Dr. Daya Nand, P.W.2 Dr. B.L. Bagri, P.W.3 Assistant Sub Inspector Raghbir Singh, P.W.4 Shamsher Singh, Draftsman, P.W.5 Chandu Lal (complainant), P.W.6 Ramesh, an eye-witness, P.W.7 Subash, another eye-witness, P.W.8 Dr. (Mrs.) K.K. Naval, P.W.9 Om parkash and P.W.10 Assistant Sub Inspector Jagdish Chander, Investigating Officer. The prosecution also tendered in evidence reports Exhibits P.S and P.S/1 of the Forensic Science Laboratory, Madhuban.

7. On the conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 of the Code of Criminal Procedure wherein they denied the prosecution allegations and pleaded false implication.

Criminal Appeal No.135-DB of 1998.

Accused Raju further stated that on March 31, 1994, on the occasion of `Bana' ceremony in connection with the marriage of the son of Parbhati, ladies were singing songs near the Government Live Stock Farm, Hissar, where Ishwar (deceased) came in a drunken condition and misbehaved with the ladies. Someone out of the persons who were accompanying those ladies inflicted injuries to Ishwar in order to save the honour of the ladies. Due to suspicion, he and his co-accused were falsely implicated by the police. He also stated that the First Information Report is ante-time and P.Ws were not present at that time. In their zeal to strengthen the prosecution case, the police has shown false recovery of knife from his co-accused Anil alias Balli and Sucha Singh. Similar statements were made by the other accused. However, the accused did not lead any evidence in defence.

8. Arguments of Mr. Baldev Singh, learned Senior Advocate, assisted by Mr. Arshvinder Singh, Advocate, appearing for the appellants, Mr. S.S. Goripuria, learned Additional Advocate General, Haryana and Mr. Hemant Bassi, Advocate, appearing for the complainant, were heard and the evidence was scrutinised with their help.

9. Learned counsel for the appellants has assailed the case of the prosecution on the point of motive. According to him, there was no motive for the accused to cause the death of Ishwar and in the absence of any motive, the accused cannot be convicted. There was no prior enmity between the parties.

To strengthen this argument, he referred to the examination-in-chief of P.W.5 Chandu Lal (complainant) wherein it has been recorded:

> " There was no prior enmity between the accused and my brother. The quarrel took place on that very day not before this occurrence."

10. We have considered this contention but are unable to agree with the same for the simple reason that the existence of motive becomes irrelevant in cases where case of the prosecution is otherwise proved from the ocular evidence coupled with the medical and circumstantial evidence. However, in order to avoid confusion, parallel record maintained in Hindi script was perused wherein it has been recorded that prior to the occurrence in question, a fight had taken lace between Ishwar (deceased) and the accused persons and in order to avenge they had attacked Ishwar and killed him. Moreover, the version given in the First Information Report has to be appreciated, wherein it has been recorded that just before the present occurrence, some quarrel had taken place between the parties. Further more, when appellant Raju was arrested on April 02, 1994, he was having an injury on his right forearm which was bleeding. He was taken to General Hospital, Hissar, where he was medico-legally examined by Dr. B.L. Bagri (P.W.2)

and a lacerated wound 2-1/2 cm x ½ cm on the posterior aspect of right forearm, which was bleeding, was detected. According to the Doctor, the nature of injury was simple. Probable duration of injury was within 72 hours. The kind of weapon used was blunt. All this shows that some quarrel had taken place between the parties just before the present occurrence and there existed a motive too for the accused to cause injuries to Ishwar (deceased).

11. Learned counsel for the appellants then argued that presence of P.W.5 Chandu Lal (complainant) at the place of occurrence is doubtful as he did not intervene to save his brother Ishwar (deceased) and further that his name was not mentioned in the ruqa (Exhibit P.A) which was sent by Dr. Daya Nand (P.W.1) regarding the arrival of the dead body of Ishwar in the hospital. The complainant also did not raise any hue and cry and that his clothes were not smeared with blood while he was taking the deceased to the hospital in a rickshaw.

12. Even this contention of the learned counsel for the appellants does not carry any weight. Non-mentioning in the ruqa (Exhibit P.A) as to who had brought the dead body of Ishwar to the hospital by Dr. Daya Nand (P.W.1) does not at all affect the prosecution case as in the inquest report (Exhibit P.M), prepared by Assistant Sub Inspector Jagdish Chander on the dead body of Ishwar, which was lying in the mortuary of

the General Hospital, Hissar, it is mentioned that the dead body was identified by Chandu Lal (complainant) and Vijay son of Phool Singh. Thus, it cannot be disputed that the dead body of Ishwar was brought to the hospital by complainant Chandu Lal. So far as contention of the learned counsel for the appellants that Chandu Lal did not intervene to save his brother from the clutches of the accused is concerned, it may be mentioned that at the time of occurrence the accused were four in number and accused Anil and Sucha Singh were armed with knives. After inflicting knives blows, they decamped with their respective weapons. There was not much time for Chandu Lal (complainant) to intervene in the fight. Once Ishwar (deceased) had been inflicted injuries with knives, the first anxiety on the part of Chandu Lal was to take him to hospital to save his life, which he did. The statement of Chandu Lal cannot be brushed aside merely on the ground that he happens to be brother of the deceased. His house is situated near the place of occurrence and his presence at the spot is natural. No doubt, the evidence of relation witness is required to be scrutinised with due care and caution. However, in this case, besides Chandu Lal (complainant), there are two other witnesses, namely, P.W.6 Ramesh and P.W.7 Subash, who have given the eye-witness account of the occurrence. No material discrepancy could be found in their statements which could make the prosecution case doubtful.

13. The medical evidence furnishes corroboration to the

ocular evidence given by P.W.5 Chandu Lal, P.W.6 Ramesh and P.W.7 Subash. Dr. (Mrs.) K.K. Nawal, Senior Medical Officer, General Hospital, Hissar (P.W.8), who along with Dr.Pawan Jain, had conducted autopsy on the dead body of Ishwar had observed four incised wounds on the dead body, one on the anterior aspect of left side of chest, the second on the posterior aspect of right side of chest, the third on the left side of back and fourth on the left knee joint. In the opinion of the Doctors, the death was due to shock and haemorrhage as a result of multiple injuries which were ante mortem in nature and sufficient to cause death in natural course of time. The prosecution witnesses are not bound to explain each and every injury so minutely that it should correspond to the observations of the doctors. One can understand that the witnesses are not always so specific about a particular injury because it cannot be exactly said that from which angle they saw the injuries being caused. So, the contention of the learned counsel for the appellants that the witnesses could not explain each and every injury cannot be made the basis to discard the prosecution case, which otherwise stands proved from the evidence discussed above. It is also not necessary that the witnesses should narrate the parrot like version while deposing in Court. Some contradictions are bound to occur in the statements of the witnesses especially when the evidence is recorded after a long time. Once it has been deposed by the witnesses that all the accused were present at

the place of occurrence and they had caused injuries, microscopic scrutiny of each and every injury or the manner in which the injuries were caused, cannot be permitted.

14. Another contention of the learned counsel for the appellants that the Investigating Officer failed to take into possession blood-smeared clothes of the witnesses who had taken Ishwar (deceased) to the hospital, has also no affect on the merits of the case because the Investigating Officer was required to take into possession the clothes of the deceased and not that of the witnesses. Even otherwise, the lapses on the part of the investigating agency cannot weaken the evidence furnished by the eye witnesses, which otherwise stands corroborated from the medical evidence, as discussed above.

15. In this case, First Information Report was lodged with promptness. The occurrence took place at about 10.30 P.M on March 31, 1994. The deceased was taken to the hospital at 11.18 P.M. The ruqa was sent at 11.20 P.M. Jagdish Chander, Assistant Sub Inspector (P.W.10) reached the hospital at 12.05 A.M on April 01, 1994. He recorded the statement of Chandu Lal (complainant) at 1.15 A.M. The special report reached the Ilaqa Magistrate at 3.40 A.M. As such, there was no scope for introducing false witnesses and false implication of the accused persons.

16. After having scrutinized the evidence, we do not find any infirmity in the impugned judgment. The sentence imposed on the appellants also commensurates with the offences committed by

them. So, no interference is also warranted in the impugned sentence order. We uphold the impugned judgment and the sentence order and dismiss the appeal.

(ASHUTOSH MOHUNTA)
JUDGE

October 30 , 2007.
ak

(MOHINDER PAL)
JUDGE